

### REMARKS

Claims 1-25 are pending in this application and are at issue.

Claims 10 and 11 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite because the term "the smoke flavoring agent" lacks antecedent basis in claim 6. Claims 10 and 11 have been amended to correct this typographical error and recite "a smoke flavoring agent." It is submitted that the rejection of claims 10 and 11 under 35 U.S.C. §112 has been overcome and that this rejection should be withdrawn. Claim 8 also has been amended to delete the term "further," which is a meaningless term in view of claim 6.

Claims 1-25 stand rejected under 35 U.S.C. §103 as being obvious over Wilson et al. U.S. Patent No. 5,997,925 ('925). In view of the Declaration of Jeffrey J. Rozum (Rozum Declaration) submitted concurrently with this amendment, and for the reasons set forth below, it is submitted that this rejection is in error and should be withdrawn.

In particular, applicants refer to the Rozum Declaration which includes objective evidence showing the new and unexpected results achieved by the presently claimed method over the method disclosed in Wilson et al. '925.

Wilson et al. '925, and a reference incorporated therein, merely disclose an amount of sodium nitrite in the uncooked bacon slices of 120 ppm or more (e.g., see '925 patent, column 8, lines 16 and 58). Wilson et al. '925 fails to teach or suggest reducing the amount of sodium nitrite in the uncooked bacon

slices at 80 ppm or less. Wilson et al. '925 also fails to provide any incentive for a person of ordinary skill in the art to reduce the amount of sodium nitrite in the uncooked bacon slices with any reasonable expectation of providing a more consumer-acceptable bacon product after cooking.

The attached Rozum Declaration, with supporting objective and factual evidence (see paragraphs 14-22), shows the unexpected results achieved by reducing the amount of sodium nitrite in the uncooked bacon slices to about 18 to about 80 ppm. Wilson et al. '925 absolutely fails to teach or suggest such a drastic reduction in amount of sodium nitrite, i.e., at least a one-third reduction, or that any reduction in nitrite concentration would result in an improved bacon product.

In addition, the '925 patent clearly teaches that the pork bellies are thawed to about 35°F, or received cold at 20-30°F, prior to any processing ('925 patent, column 5, lines 9-14). Claims 2 and 23-25 clearly recite that processing is performed at temperatures of 0°C or less, i.e., the pork bellies are not thawed. Contrary to the examiner's statement, the temperature of the pork belly and bacon slices during processing is a claimed element of claims 2 and 23-25 and cannot be dismissed as merely being a preferred embodiment. Accordingly, claims 2 and 23-25 are patentable over the '925 patent for reasons in addition to those discussed in the Rozum Declaration.

In summary, in view of the Rozum Declaration and for the reasons set forth above, it is submitted that the rejection of claims 1-25 as being obvious over

Wilson et al. U.S. Patent No. 5,997,925 should be withdrawn.

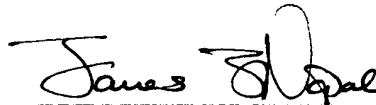
It is submitted that the claims are now of a proper form and scope for allowance. An early and favorable action on the merits is respectfully requested.

Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

**MARSHALL, GERSTEIN & BORUN LLP**

By



James J. Napoli  
(Registration No. 32,361)  
Attorneys for Applicants  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606  
(312) 474-6300

Chicago, Illinois  
August 28, 2003